

ST 99-0035-PLR 10/25/1999 SERVICE OCCUPATION TAX

This letter describes the Service Occupation Tax liabilities of a printer of personalized checks. See 86 Ill. Adm. Code 140.101. (This is a PLR).

October 25, 1999

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your letter of July 29, 1999. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

We have been reviewing Illinois law in regards to the Service Occupation Tax and have concluded we may qualify. Because we want to comply with Illinois law, I am requesting a Private Letter Ruling to ensure we are remitting the proper amount of tax to your state. There is no pending audit or litigation between COMPANY and the Department of Illinois on this or any issue. We are not aware of any previous ruling by the Department on this issue for our company.

COMPANY sells personal checks to members of credit unions located in your state and throughout the country. The checks have a retail price ranging from \$7.95 to \$12.95 per box, depending on the style selected. Our cost of materials used in producing the checks averages \$1.50 per box, with a total cost around \$3.75, including shipping costs. The cost of the materials is NOT separately stated on the invoice to the purchaser. The invoice shows the retail price, shipping charge, sales tax, and total price.

Under Illinois Regulation Section 140.101(f) it appears this sales transaction would qualify under the 35% serviceman rule because the cost of the tangible personal property used in the box of checks is less than 35% of the total transaction selling price. In this case, we would pay use tax to your state on the %1.50 cost of the materials and would not charge our customers sales tax. The cost of materials not being separately stated is irrelevant because they cost less than 35% of the total selling price. We are also relying on *Wallender-Dedman Company v Department of Revenue*, 155N.E.2d 574 (S. Ct. Ill. 1959) in its comment that commercial printing is a service in the graphic arts.

If being separately stated does matter, would we then qualify under the 50% rule and remit sales tax on 50% of the total selling price. Which is the correct method based on

the information provided? Do these rules also apply to any local/city/county taxes in Illinois?

It is very important to us that we do this correctly. Thus your quick response in reviewing our understanding of the law is greatly appreciated. If you would like to speak to me directly, you may call me at #####.

Sellers of personalized checks do not incur Retailers' Occupation Tax liability on their receipts from such sales because they are engaged in a service occupation in producing or procuring custom-ordered items that have no commercial value to others. See the enclosed copy of 86 Ill. Adm. Code 130.1995.

Some background may be of assistance since the taxation of services in Illinois can be somewhat complicated. Under the Service Occupation Tax Act, businesses providing services (i.e., servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See the enclosed copy of 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. The servicemen may calculate their tax base in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. For printers of share drafts and checks, this would include, for example, persons who print customized materials but also print stock, non-personalized items for customers, such as blank business forms. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). The printing of personalized checks is considered to be graphics arts production and the de minimis threshold is 75% for persons engaged in such graphics arts production (rather than 35% referenced in your letter). Your letter indicates that the annual aggregate cost price for producing the personalized checks for your corporation falls below the 75% threshold. Please note

that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are required to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. They collect Service Use Tax from their service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. This group of servicemen would include, for instance, printers who exclusively print customized share drafts and checks. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. They do not provide resale certificates to their suppliers, nor are they authorized to collect a "tax" from service customers.

Your letter also indicates that your corporation is registered with the Department and would be considered a de minimis serviceman. Your letter does not contain sufficient information for us to determine which de minimis option applies to you. However, if COMPANY is not otherwise required to be registered as an Illinois retailer (e.g., it does not print stock or standard forms), it could choose to discontinue its registration and instead pay Use Tax to its Illinois registered suppliers or directly to the Department as described in the final option above. In that instance, the corporation's customers incur no tax liability on their purchases.

If COMPANY is otherwise required to be registered under the Retailers' Occupation Tax Act or chooses to be registered with the State, it may use the third method described above for registered de minimis servicemen. It would pay Service Occupation Tax (which does include local taxes) directly to the Department based upon its cost price of tangible personal property transferred incident to the sale of service (cost price of the materials, such as paper and ink). Your corporation would give its Illinois suppliers resale certificates when it purchases materials in Illinois, such as paper and ink, that become a part of the checks. Your customers would incur a Service Use Tax liability when making such purchases, which you would collect and remit to the Department.

Servicemen paying Service Occupation Tax are not required to separately state tax on a customer's bill unless that customer specifically requests that the Service Use Tax be separately stated on the bill. Your letter also expresses concern regarding the cost price being separately stated on the invoice. There is no requirement that de minimis servicemen (who pay tax on their cost price) separately state their cost price on a customer's bill. Only when servicemen pay Service Occupation Tax on their selling price (the first method discussed above) does separately stating the *selling price (not the cost price)* become an issue. In that instance, such servicemen must use 50% of the entire bill as the tax base if they do not separately state a selling price. Your letter indicates that this is not applicable because your corporation wishes to utilize and is eligible to elect one of the de minimis options.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.